

ORDER NO. 1832

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Parcel Select
Parcel Select Contract 7

Docket No. MC2013-59

Competitive Product Prices
Parcel Select Contract 7 (MC2013-59)
Negotiated Service Agreement

Docket No. CP2013-80

ORDER ADDING PARCEL SELECT CONTRACT 7 TO THE COMPETITIVE
PRODUCT LIST AND CONDITIONALLY APPROVING THE ASSOCIATED
NEGOTIATED SERVICE AGREEMENT

(Issued September 11, 2013)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Parcel Select Contract 7 to the competitive product list.¹ For the reasons discussed below, the Commission approves the request to add Parcel Select Contract 7 to the competitive product list and conditionally approves the associated negotiated service agreement.

¹ Request of the United States Postal Service to Add Parcel Select Contract 7 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, August 30, 2013 (Request).

II. BACKGROUND

On August 30, 2013, in accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Parcel Select Contract 7 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Postal Service further asserts that the prices and classification underlying the contract are supported by Governors’ Decision No. 11-6.² Among the supporting documents, the Postal Service included a statement supporting the Request, a certification of compliance with 39 U.S.C. 3633(a), a copy of Governors’ Decision No. 11-6, and a contract related to the proposed new product. In addition, the Postal Service submitted an application for non-public treatment of materials, including redacted portions of the contract, customer-identifying information, and related financial information filed under seal. Request, Attachment F.³

On September 3, 2013, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

² Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

³ In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

⁴ Order No. 1826, Notice and Order Concerning the Addition of Parcel Select Contract 7 to the Competitive Product List, September 3, 2013.

On September 4, 2013, Chairman's Information Request No. 1 was issued.⁵ The Postal Service filed its response on September 9, 2013.⁶

III. COMMENTS

The Public Representative filed comments on September 10, 2013.⁷ No other interested person submitted comments. Stating that the Postal Service's assertions concerning 39 U.S.C. 3641(b)(1) appear reasonable, the Public Representative states that Parcel Select Contract 7 should be added to the competitive product list. PR Comments at 3. Based on the financial model filed under seal by the Postal Service, the Public Representative asserts that the negotiated prices appear to generate sufficient revenues to cover costs during the first year of the contract. *Id.* In future contract years, the contract terms include the periodic adjustment of prices, which the Public Representative believes will maintain the contract's ability to meet the requirements of 39 U.S.C. 3633(a) over the lifetime of the contract. *Id.* She concludes that Parcel Select Contract 7 should be added to the competitive product list and that it satisfies the requirements of 39 U.S.C. 3633(a). *Id.* at 2.

IV. SUPPLEMENTAL INFORMATION

CHIR No. 1 sought information on seemingly inconsistent terms within the contract concerning the date of the annual price adjustment. CHIR No. 1 at 1. In addition, CHIR No. 1 sought information concerning the inclusion of data for packages not eligible for contract prices in the contract's revenue per-piece calculation. *Id.* at 2. In its response, the Postal Service states that the date in Paragraph I.E.3 of the contract

⁵ Chairman's Information Request No. 1, September 4, 2013 (CHIR No. 1).

⁶ Response of the United States Postal Service to Chairman's Information Request No. 1, September 9, 2013 (Response to CHIR No. 1).

⁷ Public Representative Comments on Postal Service Request to Add Parcel Select Contract 7 to Competitive Product List, September 10, 2013 (PR Comments).

is incorrect and that it will file an amendment to correct the error. Response to CHIR No. 1 at 2. In addition, the Postal Service explains that non-contract pieces are included in the workpapers because the “customer’s other Parcel Select pieces that are shipped at published prices also result in additional contribution to the Postal Service.” *Id.* at 3. It further states that for this reason, non-discounted DDU Parcel Select pieces are included in the Postal Service’s financial analysis. *Id.*

V. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the Response to CHIR No.1, and the comments filed by the Public Representative.

Product list requirements. The Commission’s statutory responsibilities when evaluating the Request entail assigning Parcel Select Contract 7 to either the market dominant or competitive product list. See 39 U.S.C. 3642(b)(1); 39 CFR 3020.30(d). In addition, the Commission must consider the availability and use of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. 3642(b)(3); 39 CFR 3020.30(f), (g), and (h).

The Postal Service asserts that it provides Parcel Select service in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service affirms that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that it is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the market for the delivery of parcels is highly competitive and thus prevents the Postal Service from significantly increasing rates or

degrading service without potentially losing volume. This is borne out by the availability of other providers. Further, there is no evidence of an adverse impact on small business concerns. For these reasons, the Commission finds that the instant contract is appropriately classified as a competitive product and added to the competitive product list.

Cost considerations. Because Parcel Select Contract 7 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. 3632(b)(3) and 3633(a); 39 CFR 3015.5.

The Postal Service submitted a certified statement, along with supporting revenue and cost data, which demonstrates that the instant contract satisfies the statutory and regulatory requirements for the first year.⁸ The data demonstrate that the contract's prices will likely cover their costs during the first year. However, subsequent years of the contract are problematic.

In Response to CHIR No. 1, the Postal Service indicates that Paragraph I.E.3 contains an error concerning the date on which prices will be adjusted. Response to CHIR No. 1 at 2. The Postal Service represents to the Commission that it intends to file an amendment to the contract to remedy this issue. *Id.* Given this oversight and the Postal Service's representations, the Commission conditionally approves Parcel Select Contract 7 for its expected term subject to the Postal Service filing a contract amendment as represented in its Response to CHIR No. 1. If the forthcoming amendment contains only a revision of the date in Paragraph I.E.3, the condition will be satisfied, and the contract is authorized through September 30, 2016. Under those circumstances, the Commission anticipates taking no further action in this proceeding.

⁸ "Contract year" is defined as the one-year period from July 1 through June 30. Request, Attachment B at 4. The first contract year begins the day after the date on which the Commission issues all necessary approval and ends on June 30, 2014.

If, however, the forthcoming contract amendment contains different or additional terms, the Commission will notice that filing for comment prior to making a finding on whether the conditions of this Order have been satisfied. If no amendment is filed, the contract's authorization expires at midnight July 1, 2014.⁹

If the forthcoming contract amendment is not filed by September 23, 2013, on that date and every week thereafter, the Postal Service shall file a status report concerning the status of the forthcoming contract amendment until such amendment is filed. Such a report will allow an assessment of progress being made and reduce the possibility of unnecessary delay.

Financial workpapers. In Response to CHIR No. 1, the Postal Service explained that the workpapers include non-contract pieces because the "customer's other Parcel Select pieces that are shipped at published prices also result in additional contribution to the Postal Service." Response to CHIR No. 1 at 3. Only the volumes mailed pursuant to the contract and the prices thereto are relevant for determining compliance. Therefore, the Commission reviews only the prices associated with the contract pieces (Paragraph I.B. of the contract) when determining if the instant contract satisfies section 3633.¹⁰

Future Parcel Select contracts' supporting workpapers should exclude non-discounted pieces from its unit revenue calculations associated with discounted pieces. See PS7_DDU_Analysis_Public.xls, tabs: "PartnerProfile," column D and "DDU-Discounted," column F. This approach is consistent with the financial analysis for other domestic competitive NSAs that do not include non-discounted pieces in their financial analysis.

⁹ If the anticipated amendment is not filed, mandatory termination of the contract prior to the start of the second contract year should not cause undue hardship since the contract contains a provision allowing either party to terminate the contract on 3 months' written notice. Request, Attachment B at 7.

¹⁰ In this proceeding, the volume of non-discounted pieces that is included with discounted pieces is small and has a *de minimis* effect on the contract's cost coverage,

Other considerations. By its terms, the contract becomes effective one day following the day that the Commission issues all necessary regulatory approval¹¹ and allows the contract partner and the Postal Service to terminate the agreement upon 3 months' written notice. Request, Attachment B at 3.

The Postal Service shall promptly notify the Commission if the instant contract is terminated prior to the scheduled expiration date.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and tier associated with the contract.

The revision to the competitive product list appears below the signature of this Order and is effective immediately.

VI. ORDERING PARAGRAPHS

It is ordered:

1. Parcel Select Contract 7 (MC2013-59 and CP2013-80) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic.
2. The Postal Service shall promptly notify the Commission if the instant contract ends prior to the scheduled expiration date.
3. Within 30 days after the contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and tier.

¹¹ In light of Contract Provision II, which states the effective date of the contract is "the day following the date on which the Commission issues all necessary regulatory approval," the Commission intends for this Order to serve as the "necessary" Commission approval to implement the prices associated with the first year of the contract.

4. As discussed in the body of this Order, the contract and associated rates are conditionally approved for year one. Approval for subsequent years is conditioned on the filing of a contract amendment, as described above.
5. If the additional amendment is not filed by September 23, 2013, on that date and every week thereafter, the Postal Service shall file a status report concerning the status of the amendment until such amendment is filed.
6. The Secretary shall arrange for publication in the *Federal Register* of updated product lists reflecting the changes made in this Order.

By the Commission.

Ruth Ann Abrams
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2013-59 and CP2013-80. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Parcel Select Contract 7

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